IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 18320 of 2005(E)

PETITIONER:

THE VITHURA SERVICE CO-OPERATIVE
BANK LTD. NO. 1048, VITHURA, REPRESENTED BY
ITS SECRETARY, RAVEENDRAN NAIR, S/O.UNNI PILLAI,
AGED 49, `USHUS', ATTUKAL, PANAYAMUTTAM,
NEDUMANGAD, THIRUVANANTHAPURAM.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN
SRI.MANU V.

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, DEPARTMENT OF CO-OPERATIION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETY (GENERAL), VANCHIYOOR,
THIRUVANANTHAPURAM.

3. K.DIVAKARAN NAIR,
D.S.NIVAS, KATTAKKAL, VITHURA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL FOR R3
Government Pleader MR.R.LAKSHMINARAYAN FOR R1 AND R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 TRUE COPY OF THE ORDER NO.CRP(2) 7505/03/K.DIS. DATED 6.11.2003 OF THE SECOND RESPONDENT

EXT.P2 TRUE COPY OF THE ORDER GO(RT)NO.270.05/CO-OP. DATED 19.4.2005

EXT.P3 TRUE COPY OF THE STATEMENT OF DEFENCE DT.3.10.97 AND SUBMITTED TO THE SOCIETY ON 7.11.97 BY THE THIRD RESPONDENT

EXT.P4 TRUE COPY OF THE RESOLUTION NO.426 DT.14.5.1998 OF THE BOARD OF DIRECTORS OF THE PETITIONER SOCIETY

EXT.P5 TRUE COPY OF THE ENQUIRY REPORT DT.14.7.1998 SUBMITTED BY THE ENQUIRY OFFICER ADVO.KSREEKUMARAN NAIR

EXT.P6 TRUE COPY OF THE ORDER DT.17.8.1998 OF THE SUB COMMITTEE OF THE PETITIONER SOCIETY

EXT.P7 TRUE COPY OF THE ORDER DT.21.11.1998 OF THE BOARD OF DIRECTORS OF THE PETITIONER SOCIETY

TRUE COPY

PA TO JUDGE

K.BALAKRISHNAN NAIR , J.

Writ Petition (C) No.18320 of 2005-E

Judgment

The writ petitioner is a co-operative society. It is challenging Ext.P1 order of the Joint Registrar of Co-operative Societies and Ext.P2 Government Order. By Ext.P1, the Joint Registrar set aside the punishment imposed on the third respondent, who was an employee of the petitioner society. He was compulsorily retired from service in 1998 by the society. That decision was rescinded by Ext.P1 order. By Ext.P2, the appeal filed by the society against the said order before the Government was dismissed. Hence this Writ Petition, challenging Exts.P1 and P2. The brief facts of the case are the following :

2. The third respondent was an Accountant under the petitioner co-operative society. He was having a savings bank account with the society. He withdrew amounts from the Bank though, there was no balance in his account. Thus, he committed misappropriation. He was suspended from service and charge sheeted. An enquiry was held into the charges. The petitioner submits, the third respondent pleaded guilty and prayed for forgiveness. Based on the enquiry report, the third respondent was dismissed from service. The Managing Committee, which is the appellate authority, reduced the punishment to one of compulsory retirement. The Joint Registrar interfered under Rule 176 of the Co-operative Societies Rules and ordered to take a lenient view in the

matter so that he could draw pension. So, the Society was directed to reinstate him in service and treat the period he was out of service as leave without allowance. The petitioner challenged that order before this Court. This Court set aside the order and remitted the matter for fresh decision of the Joint Registrar in accordance with law after hearing both sides. The Joint Registrar reconsidered the matter. It was found that the Managing Committee formed a sub-committee, consisting of five members for taking disciplinary action against the third respondent. The total strength of the Managing Committee was 11. Later, two of the members of the sub-committee resigned, making the strength of the sub-committee three. Out of the said three, two met and imposed the punishment of dismissal of the third respondent from service. On his appeal, the Managing Committee decided to convert the punishment to one of compulsory retirement from service. Two of the members of the sub-committee who resigned also participated in the Managing Committee meeting, which heard the appeal. The Joint Registrar found that the sub-committee did not have quorum as only two participated out of the five members when it decided on the imposition of punishment on the third respondent. It was also found that since two of the erstwhile sub-committee members also participated in the Managing Committee meeting, which heard the appeal, the appellate order is vitiated. So, the Joint Registrar set aside the order of the sub-committee as well as the order of the Managing

Committee. The society appealed before the Government. The Government did not interfere with the decision of the Joint Registrar. The appeal was dismissed by Ext.P2. The petitioner attacks Exts.P1 and P2 on various grounds.

3. The third respondent has filed a counter affidavit and an additional counter affidavit, supporting the impugned orders. According to him, the impugned orders are perfectly legal and valid.

4. Heard the learned counsel on both sides. Going by the facts of the case, I feel that the decision of the Joint Registrar or the Government cannot be faulted. Even though two members resigned, the strength of the sub-committee was 5. So, two members of the sub-committee did not constitute the quorum. Therefore, the original decision is by a sub-committee, which did not have the quorum. Two members, who were the members of the sub-committee, participated in the Managing Committee, when the appeal was considered. For that reason, the appellate order is also vitiated. I feel that the view taken by the Joint Registrar is a plausible view and therefore, the same cannot be unsettled under Article 226 of the Constitution of India. For the same reason, this Court is not justified in interfering with the appellate order of the Government also. But, I find that the orders in favour of the employee have been rendered on technical grounds. There is no decision as to whether the third respondent was actually guilty or not. As things stand now, there

is an enquiry report against the third respondent, finding him guilty. Therefore, normally, the society should be conceded freedom to take disciplinary action against the third respondent afresh in accordance with law. Now, another difficulty arises as the third respondent has already crossed the age of superannuation. But, on the date of Ext.P1, the third respondent has not retired. Therefore, I feel that the society should be given freedom to decide whether any action should be taken and if so, what action should be taken against the third respondent when he was in service as on the date of Ext.P1.

5. The period the third respondent was out of service from the date of dismissal upto the date of the first order of the Joint Registrar, i.e., 03.04.2003, should be treated as leave without allowance, as the third respondent has not challenged the said direction in that order concerning how it should be treated. From the date of that order till the date of Ext.P1, the third respondent is entitled to get at least subsistence allowance. If the third respondent has reached the age of superannuation on the date of Ext.P1, he shall be paid subsistence allowance upto the date of superannuation and further proceedings shall be dropped against him. If he was in service, the competent authority of the society shall decide as mentioned earlier, as to what action should be taken against him. How the period from the date of Ext.P1 should be treated will depend upon the action, if any taken against him and

that point shall also be decided, if the society imposes any punishment in the disciplinary proceedings against the third respondent.

The Writ Petition is disposed of as above.

01.12.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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